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May 4, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals - TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Ex Parte  
SBC/Ameritech Merger  
CC Docket No. 99-141


Dear Ms. Salas:

On behalf of CoreComm Limited ("CoreComm"), pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. Section 1.1206(b), we are providing for inclusion in the public record of this proceeding the attached letter from CoreComm to Robert Atkinson concerning issues in the above-captioned proceeding.

Two copies of this letter and attachment are enclosed.

Please contact the undersigned if any questions arise concerning this submission.

Sincerely,

  
Eric Branfman

cc: Attached Service List.



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May 4, 1999

VIA HAND DELIVERY

Robert Atkinson, Esq.  
Deputy Chief, Common Carrier Bureau  
Federal Communications Commission  
The Portals - Fifth Floor  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: Ex Parte re SBC/Ameritech Merger CC Docket No. 99-141

Dear Mr. Atkinson:

On behalf of CoreComm Ltd. ("CoreComm"), I am writing to thank you again for taking the time to meet with us on April 29, 1999, to discuss CoreComm's concerns about the anti-competitive effects of the proposed merger between SBC Communications and Ameritech and the need for strong, market opening conditions to promote residential competition should the Commission determine to approve the proposed merger. This letter will elaborate on the points discussed during that meeting and provide follow-up information for the Commission's consideration in this proceeding.

As we discussed, CoreComm's subsidiaries have been providing integrated, custom tailored packages of local exchange and other competitive services to residential and business customers in Ohio since March 1998. Although the company is currently providing local exchange services as a reseller of Ameritech services, it is in the process of deploying its own facilities in Ohio and elsewhere pursuant to its Smart Local Exchange Carrier ("Smart LEC") strategy directed toward creating a national, facilities-based broadband network.

Unlike many other competitive entrants, CoreComm is particularly focused on serving the residential marketplace through a bundling and customer care strategy perfected by CoreComm's commonly managed affiliate in the United Kingdom.<sup>1</sup> In furtherance of its Smart LEC plan, CoreComm is purchasing the advanced operational support systems, customer accounts and other assets of USN Communications, Inc., which currently provides competitive telecommunications services to thousands of residential and business customers in the Ameritech and Bell Atlantic service territories, as well as MegsINet, a national Internet service provider and regional CLEC with its own advanced network.

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<sup>1</sup>CoreComm is a commonly-managed affiliate of NTL, Inc., the second largest competitive provider of broadband services in the United Kingdom with more than 1.3 residential customers receiving telephone, television and Internet access services.

Robert Atkinson, Esq.  
May 4, 1999  
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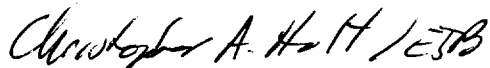
As we also discussed, CoreComm is concerned that approval of the merger as currently proposed would result in significant anti-competitive consequences for the development of competition in the residential and small business marketplace. Appendix 1 to this letter briefly summarizes those harms, which are more fully reflected on the record in this proceeding and need not be addressed in greater detail here.

At the same time, however, CoreComm is not unequivocally opposed to the merger like other parties to the proceeding. Instead, CoreComm believes that many of the more significant anti-competitive consequences of the merger could be effectively counterbalanced by the imposition of stringent, market opening conditions designed to facilitate the pro-competitive goals of the 1996 Act, coupled with strict and effective enforcement mechanisms. Indeed, in the SBC/Ameritech merger case before the Public Utilities Commission of Ohio ("PUCO"), CoreComm joined in a stipulated settlement and agreed not to oppose grant of the merger application in Ohio under the terms and conditions set forth in the Stipulation, believing that those conditions presented a pragmatic solution in the context of that narrowly focused proceeding.

Attached to this letter as Appendix 2 is a set of proposed conditions that CoreComm believes could help counterbalance the anti-competitive effects of the proposed SBC/Ameritech merger and promote the development of residential and small business competition. In this attachment, we identify, in several key areas such as interconnection agreements, unbundled network elements, and operations support systems, problems commonly faced by new entrants in seeking to provide competitive local services to residential and small business customers, and pragmatic merger conditions that we believe the Commission could mandate under its broad authority to review the joint application. We also describe various pragmatic enforcement mechanisms designed to help ensure that the conditions are met.

We hope that the Commission finds CoreComm's perspective as a residential competitor helpful as it proceeds with its deliberations in this matter. CoreComm would be pleased to provide further information concerning these proposed conditions or other issues raised by the proposed SBC/Ameritech merger.

Sincerely,



Christopher A. Holt  
Assistant General Counsel - Regulatory  
& Corporate Affairs

cc: Attached Service List

## Attachment 1

### Anti-Competitive Effects of Proposed SBC-Ameritech Merger

- I. The proposed merger will increase the market power of the merging entities.
  - A. SBC's monopoly relationships with customers headquartered in its territory can be leveraged to gain an advantage for Ameritech with those customers in parts of Ameritech territory where Ameritech faces competition.
  - B. Ameritech's monopoly relationships with customers headquartered in its territory can be leveraged to gain an advantage for SBC with those customers in parts of SBC territory where SBC faces competition.
  - C. In each of the foregoing cases, the merged company would be engaging in anticompetitive monopoly leveraging by "employing [its] monopoly power as a trade weapon against [its] competitors." *United States v. Griffith*, 334 U.S. 100, 107 (1948)
  - D. To some extent, a CLEC faces increased difficulties in competing with a company that is much larger. The merger will increase the gap between the size of most CLECs and the size of the ILEC with which they are competing.
- II. The proposed merger will have an adverse impact on benchmarking.
  - A. Benchmarking is critical to interconnection issues, which frequently hinge on claims of technical infeasibility where only the ILECs have the facts and regulators and competitors are in a poor position to provide independent judgment.
  - B. Benchmarking has been critical in the past:

Seven examples were provided by AT&T and listed in Judge Bork's memorandum of April 7, 1999. In these examples, ILEC claims of technical infeasibility were disproved because other ILECs provided the service: shared transport; providing access billing records for CLECs using the unbundled switch; providing CLECs using the unbundled switch with mechanized loop testing; cageless collocation; collocation of remote switching modules; selective routing of operator and directory assistance traffic to the CLEC's own operator centers.
  - C. Benchmarking will continue to be critical. While certain interconnection issues may be settled by the section 271 process or in other proceedings, new issues will continue to arise as interconnection is sought for data transmission and other advanced services.

- D. Reducing the number of ILECs from six to four will not only reduce the number of available benchmarks by two, but will enhance the likelihood that the remaining four will be able to tacitly agree not to "break ranks" on any issue of technical feasibility that may arise in the future.
  - E. The proposed merger will exacerbate what the Chairman of the Ohio Commission called the "gridlock" problem – the "unwillingness on the part of a multi-state corporation to compromise a position in a given state, not on the merits, but solely out of fear of it eroding its 'litigation position' in other states." Ohio PUC, No. 98-1082-TP-AMT, Concurring Opinion of Chairman Glazer at 6 (April 8, 1999). CLECs and regulators seeking compromise with Ameritech will face an incumbent that has to be concerned not only with the impact of compromise on its position in the other 4 Ameritech states, but also with the impact of the compromise on the 8 SBC states.
- III. The proposed merger will extend the reach of SBC corporate management, which has a philosophy totally opposed to local exchange competition, and a demonstrated willingness to block meaningful implementation of the pro-competitive requirements of the Telecommunications Act of 1996.
- A. SBC's die-hard, litigious approach was noted by the federal district judge who decided the first case involving arbitrations under section 252 of the Act. The judge found SBC's tactics in the case "distressing," noting that SBC had "tak[en] positions in this litigation that it had expressly disavowed in the PUC administrative hearing" and had "fought tooth and nail for every single obviously non-meritorious point." *Southwestern Bell Tel. Co. v. AT&T Communications of the Southwest, Inc. et al.*, 1998 WL 657717 \*17 (W.D.Tex. 1998). The intended effect of these tactics is clear.
  - B. As one of the Texas PUC Commissioners recognized, even those CLECs with "de minimis customers" in Texas have secured their market share "only with Bell resisting at every turn." *Investigation of Southwestern Telephone Company's Entry into the Texas InterLATA Telecommunications Market*, Project No. 16251, Tr, 203-4 (May 21, 1998). The Commissioner went on to ask the key question: "Will these CLECs and other CLECs be able to retain even this level of customer base into the future, much less to provide a real competitive alternative to additional subscribers? Under current practice, it is highly doubtful." *Id.*
- IV. The proposed merger will eliminate competition between SBC and Ameritech.
- A.. As adjacent ILECs, they are natural competitors. And their experience with managing local competition, as well as their existing contacts with large business

customers doing business in their home regions, gives them an edge over other competitors.

- B. The record establishes that Ameritech considered entry into St. Louis, and SBC into Chicago.
  - C. The joint applicants now claim that out-of-region competition is essential to their corporate survival, in terms of keeping large business customers. But if corporate survival is at stake that means they will compete out of region even without the merger.
  - D. Their claim that the merged company could compete more effectively out of region, if true, means that after the mergers, other ILECs will be less likely to initiate competition in the SBC-Ameritech region, because SBC-Ameritech could retaliate more effectively.
- V. The claimed beneficial impacts (through the "National/Local Strategy") are confined to the market for large business customers, which is becoming competitive anyway. And even that depends on the merged company getting Section 271 approval for all of its major states.

## Attachment 2

### Conditions to Counterbalance Anti-Competitive Effects of Proposed Merger and to Promote Residential Competition

CoreComm believes that approval of the proposed SBC-Ameritech merger without appropriate conditions would lead to anti-competitive consequences. Therefore, in the event that the Commission decides to approve the proposed merger, it should attempt to mitigate the anti-competitive effects of the merger by imposing conditions, such as those listed below, that would mitigate these consequences. These conditions are designed to address the problems that CLECs, particularly CLECs serving residential customers, encounter at each stage of the process of entering the local exchange market:

#### I. Rates paid by residential service providers

##### ● Margins

**Problem:** While the anti-competitive effects of the merger will be felt by all customers, the claimed benefits of the merger are focused upon business customers. This places a special obligation on the Commission to focus on residential customers, particularly in light of the fact that most CLECs have concentrated on business customers because of low or non-existent margins of residential customers.

**Solution:** The merged company should be required to adopt transitional carrier-to-carrier discounts for resold residential services and for unbundled network elements, such as loops, used to provide residential services. See, e.g., Stipulation and Recommendation, *In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change in Control*, Case No. 98-1082-TP-AMT (P.U.C.O. filed February 23, 1999) ("*Ohio Stipulation*") at IX.C. Such discounts would help jump-start competition in the residential market.

#### II. Interconnection Agreements

##### ● Burden of negotiating and administering multiple agreements with a single ILEC having superior bargaining and market power

**Problem:** The relatively small size of CLECs like CoreComm means that the burdens of negotiating and administering different interconnection agreements in each state is significant and presents an impediment to entry. Moreover, the ILEC has substantial bargaining power and little incentive to compromise, while the CLEC must have an agreement to get into business. SBC has tacitly acknowledged this problem by proposing in its Texas Memorandum of Understanding to offer a model agreement that may be adopted by all CLECs. However, that model agreement forces CLECs to choose between

the important advances reflected in the model agreement and the advances they may have won in their own arbitrations.

**Solution:** The merged company should be required to submit a baseline agreement for review and comment by CLECs and approval by the FCC. This agreement would be available for adoption by any CLEC in any state or states served by the merged company, subject to the approval of the state Commission pursuant to Section 252. This agreement would be subject to modification in each state based upon differing state requirements or circumstances, such as different rates. Moreover, in any state, the baseline agreement may be added to on a "pick and choose" basis, using other agreements from the same state. In addition, CLECs would be free to negotiate for additions to the baseline agreement and to arbitrate before the state Commission any such additional issues upon which agreement could not be reached.

- Delays in achieving approved agreements

**Problem:** The negotiation and approval process delays CLEC entry.

**Solution:** The merged company should be required to treat interconnection agreements as effective upon the signature of both parties, subject to a condition subsequent of approval by the state Commission. This approach has been used without difficulty by Bell Atlantic for nearly three years.

- Non-public side agreements between ILECs and other ILECs or CLECs

**Problem:** Not all documents constituting, or related to, interconnection agreements, such as letters interpreting interconnection agreements, are being filed with state commissions for possible adoption by CLECs under Section 252(i).

**Solution:** The merged company should be required to file all such documents to which it is now or later becomes a party. (CoreComm supports AT&T's April 16, 1999 ex parte condition 6.)

- Inability to use Section 252(i) to obtain agreements

**Problem:** While Section 252(i) was intended to allow CLECs to reduce the cost and delay inherent in negotiating interconnection agreements with much larger entities that have little incentive to agree, since the Supreme Court decision upholding the FCC's "pick and choose rule," the merger applicants and other ILECs have adopted a series of tactics designed to thwart use of Section 252(i). For example, SBC has been sending out notices to terminate agreements upon their expiration approximately one year before the expiration date (even though only as short a period as 60 days notice is required), then claiming that the agreement is unavailable for adoption under Section 252(i).

**Solution:** The merged company should be required to make available for Section 252(i) adoption all agreements to which it is a party until the agreement expires for the original CLEC party to the agreement.

### III. Collocation

- Collocation expense and delay serves as entry barrier

**Problem:** Collocation can be a time-consuming process, delaying competitive entry and imposing substantial expenses, some of which are unnecessary. Absent the cost-saving solutions provided in the FCC's recent *Collocation Order*, collocation is a real barrier to entry.

**Solution:**

1. The merged company should be required to: (a) provide a baseline series of collocation options, regardless of what happens to the FCC's *Collocation Order* on judicial review and (b) make available the collocation options provided in the FCC's recent *Collocation Order*, pending judicial review. We note that SBC's Texas Memorandum of Understanding incorporates most aspects of the *Collocation Order*, including cageless, small space, adjacent space, and shared collocation, a shortening of collocation intervals, types of equipment that may be collocated, and procedures regarding space availability.
2. The merged company should be required to offer promotional discounts on collocation.

### IV. Unbundled Network Elements

#### A. Loops

- Enhanced Extended Loops are needed to serve certain areas economically

**Problem:** Collocation may be uneconomic, or unavailable, in areas that the CLEC seeks to serve. The economics of collocation are a particular problem in many residential areas, in which central offices tend to serve fewer lines.

**Solution:** Enhanced Extended Loops (a combination of loop, transport and where necessary, multiplexing) enable CLECs to reach customers in areas where collocation is impossible or economically infeasible. The merged company should be required to make enhanced extended loops available at TELRIC pricing. We note that in its Texas Memorandum of Understanding, SBC agrees to provide Enhanced Extended Loops.

- Sub-loop unbundling is often necessary to provide data traffic economically

**Problem:** Customers are increasingly demanding digital loops, which often requires loop conditioning if the entire loop is purchased. Moreover, the requirement that a CLEC purchase an entire loop restricts the CLEC's ability to deploy its own network and provision service in the most efficient and economical manner. For example, it may be more efficient for the CLEC to collocate in the field, rather than in the ILEC's central office.

**Solution:** Sub-loop unbundling shortens the loop and greatly diminishes the need for conditioning in order to upgrade capability for data traffic. A condition requiring sub-loop unbundling is essential if CLECs are to compete in a market where customers increasingly demand upgraded data transmission. Sub-loop unbundling also allows CLECs to invest in their own loop facilities short of providing the last 100 feet. (CoreComm supports OpTel's ex parte comments of April 15, 1999; OpTel's proposal should stimulate competition in MDUs, where little competition has occurred to date. It also would relieve the pressure on collocation at central offices.)

- CLECs are disadvantaged in competing for customers desiring xDSL service

**Problem:** ILECs are not providing CLECs with parity access to information, elements, and services essential for CLECs to compete on a level playing field in offering xDSL service. For example, CLECs are denied access to fundamental information, such as loop plant inventory, necessary to make decisions about deploying xDSL service.

**Solution:** In order to facilitate the deployment of xDSL technology on a competitive basis, the merged company should be required to:

1. provide CLECs with full access to all information that the merged company uses to plan and deploy xDSL service, including but not limited to, its inventory of loop plant;
2. provide parity access to information about general loop qualifications as part of the preordering process for obtaining unbundled loops – including presence or absence of digital loop carrier, presence or absence of active or passive electronics, presence or absence of bridge taps, loop resistance, loop design strategy, etc.;
3. where it deploys xDSL technology in any central office in which all options for physical collocation have been exhausted and CLECs are not able to collocate to offer their own xDSL services, the merged company should be required to work with requesting CLECs in good faith to develop a workaround on an expedited basis; and

4. price loops on the basis of the TELRIC cost of providing them, rather than upon the use to which they will be put. In other words, if loops used to provide advanced services are priced higher than analog loops, the differential shall be equal to the additional TELRIC cost of conditioning the loop to provide the advanced services.

- Spectrum management

**Problem:** Uses of loops for advanced services can in some instances cause some spectrum incompatibility problems. ILECs have managed these problems in a discriminatory fashion, so as to give themselves preference where ILEC and CLEC uses conflict.

**Solution:** Require the merged company to manage spectrum in a competitively neutral manner. We note that in its Texas Memorandum of Understanding, SBC undertakes some commitments of this nature.

**B. Transport**

- CLECs are unable to obtain adequate transport functions at TELRIC rates.

**Problem:** As a matter of practical implementation and economics, CLECs entering a market are not able to duplicate the ubiquitous nature of the ILEC network. CLECs, as they move from resale to facilities-based competition are dependent on obtaining transport from ILECs to connect switches in their own networks. While some transport options are available on a tariffed basis, the expense and practical difficulty of cobbling together a patchwork of tariffed offerings hinders the ability of new entrants to compete effectively, especially during the transition to facilities based competition.

**Solution:** The merged company should be required to provide a full range of transport options as unbundled network elements at TELRIC rates. In particular, the merged company should be required to provide shared transport and all elements necessary to provide SONET ring service as unbundled network elements.

- CLECs are unable to obtain "dark fiber" from ILECs.

**Problem:** Fiber cable is the premier communications transmission facility, combining low cost, efficiency, and huge capacity. Its broader availability to new entrants, without a requirement that they also purchase loop electronics, would substantially promote competition in provision of local services.

**Solution:** The merged company should be required to provide dark fiber as an unbundled network element.

C. Intellectual Property

- Intellectual property claims

**Problem:** Third-party vendors may raise intellectual property claims against CLECs using ILEC UNEs or reselling ILEC service.

**Solution:** The merged company should be required to indemnify CLECs against such claims, except where the claim arises from a use unique to the CLEC. (CoreComm supports AT&T's April 16, 1999 ex parte condition 5.)

D. Non-Recurring Charges

- Non-recurring charges are an entry barrier

**Problem:** Non-recurring charges often pose a barrier to entry for CLECs, particularly smaller CLECs.

**Solution:** The merged company should be required to offer an option which allows CLECs to pay non-recurring charges over time, by amortizing them over an extended period, without interest. This option would also be available for non-recurring charges relating to resold services and collocation. (This type of remedy was a condition of the Bell Atlantic/NYNEX merger. See also *Ohio Stipulation* at Sections IX.C.4.j.(D); IX.F)

V. Resale

- Ability to offer realistically marketable end user service packages.

**Problem:** ILECs are able to offer consumers and businesses a full range of services including basic telecommunications services (such as voice service) and information services (such as voice mail). As a practical matter, new entrants are not able to effectively duplicate this full range of services. It has been CoreComm's experience that many customers, particularly residential customers, highly value voice mail service. Numerous technical problems prevent use of third party vendors as an effective substitute. ILEC refusals to allow resale of voice mail, even at retail rates, are strong evidence of abuse of monopoly power, for short-term profit is being sacrificed for the ILEC's longer-term goal of injuring a competitor. ILECs are also resisting obligations to resell DSL service. As a practical matter, new entrants will be substantially hindered in their ability to enter local service markets if they are unable to offer consumers a full range of end user services - including voice mail and DSL service - that ILECs are able to offer.

**Solution:** The merged company should be required to offer for resale all end user services, including information and DSL services.

- Abuse of promotions

**Problem:** ILECs are using promotions to win-back customers before CLECs even complete service orders.

**Solution:**

1. Promotions should be available for resale at wholesale discounted rates.
2. The merged company should be restricted from conducting win-back marketing until a period of time after new service orders have been completed by CLECs. (CoreComm supports AT&T's April 16, 1999 ex parte condition 8.)

- Abuse of ILEC subsidiaries

**Problem:** ILECs are establishing wholly-owned "CLEC" subsidiaries to provide the illusion of competition in their own franchise territory.

**Solution:** Subsidiaries of the merged company will not be allowed to resell the service of the merged company in-region. (CoreComm supports AT&T's April 16, 1999 ex parte condition 9.)

- Term and volume and ICB contracts

**Problem:** ILECs are not permitting CLECs to resell services that are subject to a term and volume discount or a customer service or ICB discount at an additional wholesale discount and without termination penalties.

**Solution:** The merged company should be required to allow CLECs to resell such services at the regular avoided cost discount and without a termination penalty being imposed upon the CLEC or the end user (unless service is stopped before the original termination date). This will apply both to new customers and to customers with existing arrangements assumed by the CLEC.

- ILEC refusal to apply proper discount

**Problem:** Ameritech has refused to apply the state-mandated discount to certain services, claiming that its avoided costs are less for such services. This creates a situation in which the CLEC gets the average discount for services where avoided costs are above-average, but a below-average discount for services where avoided costs are below-average.

**Solution:** The merged company should be required to post all retail and wholesale prices on its Website, permitting easy scrutiny by CLECs and regulators of the discounts being offered.

## VI. OSS

### ● Adequacy of ILEC OSS

**Problem:** Inadequate OSS provided by the ILEC can impede the CLEC's ability to serve its customers and undermine the new entrant's reputation, severely diminishing its chances of competitive success.

#### **Solution:**

1. Performance standards
  - a. The merged company should be required to adopt OSS measurements, performance standards, and remedies (including liquidated damages) throughout its region that are at least as stringent as the Texas standards. Failure to implement these standards in any state would result in penalty payments to CLECs in that state. See, e.g., *Ohio Stipulation* at Section IV.D.6.a. Penalty payments should be large enough to provide the merged company with an incentive to implement the standards, rather than paying the penalties as a "cost of doing business." A formula tied to a percentage of the merged company's revenue during the period of non-compliance, with escalation provisions for sustained violations, would likely provide the necessary incentive.
  - b. The merged company should be required to apply the non-discrimination standard applied in 271 proceedings: OSS provided CLECs will be at least as good as the ILEC provides itself.
  - c. The merged company should be required to provide Client Side Interface Utilities to enable CLECs to measure performance specifications such as response time and system availability on a real time basis, so that they may identify and resolve performance bottlenecks and other impediments to service.
2. The merged company should be required to provide periodic performance reports that enable a comparison of its performance to the performance standards, and to the OSS the company provides itself.
3. Independent testing

The merged company should be required to subject its OSS systems to carrier-to-carrier testing by a neutral, independent third party, at actual commercial volumes. These tests must validate that the systems are functioning at parity and are capable of handling projected demand from CLECs, and be consistent with the needs of CLECs of all sizes, and should take place in each state in the merged company's region. Any deficiencies discovered during the testing process must be remedied as a precondition to approval. (CoreComm supports the April 16, 1999 ex parte of MCI WorldCom.)

4. Facilitation of CLEC OSS

- a. The merged company should be required to provide CLECs documentation on its OSS interfaces that is sufficiently detailed to allow an independent entity to create an integrated pre-ordering and ordering interface that is consistent with all relevant business rules.
- b. The merged company should be required to publish all of its Business and Validation rules in a structured format. The merged company should supply complete documentation on Validation Rules including Validation Table Relational Diagrams, Procedural Flowcharts and a Tutorial with examples.
- c. The merged company should be required to offer training on all OSS interfaces at no cost.
- d. The merged company should be required to demonstrate that its Local Service Center representatives have access to all product information and are instructed to immediately notify and advise CLECs how to correct errors on orders.
- e. As a precondition to approval of the merger, the merged company should be required to formalize its OSS Change Management Procedures and submit the Change Management documents to CLECs for ratification. In the event of a dispute between the merged company and CLECs on any of the procedures, the merged company must commit to submitting the dispute to the Commission for resolution.
- f. The merged company should be prohibited from moving, eliminating or downsizing any existing Ameritech or SBC CLEC service centers for at least one year after the closing. Thereafter, the merged company should be required to provide CLECs at least six months prior written notice of any intent to move, eliminate or downsize an existing Ameritech or SBC service center that provides support for CLECs. Any such move should be

subject to prior approval of the state Commission(s) having jurisdiction over the affected CLECs, after public notice and comment.

- g. The merged company should implement protocols that would allow CLECs to use Graphical User Interfaces on request for various OSS functions.
- h. The merged company must maintain a single point of contact to assist CLECs in resolving technical OSS questions.
- i. The merged company must designate and make available a team of a sufficient number of OSS experts dedicated and empowered to assist and train CLECs with OSS issues. See *Ohio Stipulation*, Section IV.B.1.

5. Collaborative process

The merged company should be required to agree to a single federal-state collaborative process on OSS issues. See, e.g. *Ohio Stipulation*, Section IV.A.

**VII. Interconnection disputes**

● State-by-state litigation of identical issues

**Problem:** ILECs have litigated issues state-by-state, imposing a drain on CLEC resources and delaying final resolution of significant problems.

**Solution:** Multi-state interconnection agreement disputes involving the merged company should be resolved by the Commission. An issue would only have to be resolved once, rather than have separate proceedings in each state. As a legal matter, if the merged company agreed, as a condition of the merger, that it would comply with its interconnection agreements, then any violation would be a violation of the Act over which the Commission would have jurisdiction under Section 208.

**VIII. Pre-merger compliance**

● Pre-merger compliance is critical

**Problem:** As the California PUC noted recently in rejecting the Section 271 application of SBC subsidiary Pacific Bell, “assertions of compliance and commitments to undertake future actions will not provide incontrovertible proof that Pacific’s systems and processes are nondiscriminatory and fair to CLCs.” R. 93-04-003 et. al. p. 195.

**Solution:** In order to track fulfillment of the preconditions prior to approval of the merger, the merged company must (i) agree to implement milestones to accomplish each of the conditions; (ii) certify to the Commission that it has implemented each of the requirements necessary to fulfill the conditions; (iii) and submit to the Commission and interested parties a minimum of 90 days data demonstrating compliance with each condition. The Commission will issue a finding that the merged company has met each of the preconditions before the merger closing. (CoreComm supports AT&T's April 16, 1999 ex parte condition 7, as well as AT&T's observation concerning "the importance of adopting clear and specific conditions that, to the maximum extent possible, must be satisfied prior to the closing of the merger, and are readily enforceable.")

## **IX. Post-merger enforcement**

### ● Difficulty of post-merger enforcement

**Problem:** Enforcement post-merger will be difficult, because merger approval will be irreversible, and company will have every incentive to litigate. It is critical to effective post-merger compliance that penalties be of a sufficient magnitude that they are not viewed by ILECs as a tolerable cost of doing business preferable to compliance. On at least two occasions, senior officials of Ameritech have told representatives of CoreComm that Ameritech would be prepared to pay monetary penalties rather than to address performance issues having a direct impact on CoreComm's ability to serve end user customers.

### **Solution:**

1. The merged company should be subject to post-merger penalties based on identified milestones of performance. Milestones should take the form of intermediate and final completion dates for various obligations imposed as conditions of the merger.
2. Penalties should take the form of increasing percentage rate reductions for end user services and/or unbundled network elements crafted in a way to benefit consumers.
3. The merged company should be warned that the Commission expects to weigh any violation of the merger conditions heavily in determining whether the "public interest, convenience, and necessity" test of Section 271(d)(3) has been met. The merged company should not expect to come to the Commission with unclean hands, in violation of its merger conditions, and receive 271 authority.
4. A condition should be imposed requiring a specific penalty structure tied to performance measures. Possible models have been proposed by CLECs in Texas

and Pennsylvania, and endorsed by Texas Staff in its 271 recommendation. The *Ohio Stipulation* includes some penalties, as well. (CoreComm supports Intermedia's March 30, 1999 ex parte discussion on this subject.)

**SERVICE LIST**

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**CERTIFICATE OF SERVICE**

I, Eric J. Branfman, hereby certify that on this 4<sup>th</sup> day of May 1999, copies of the foregoing letter were delivered by hand to the names on the following list:

A handwritten signature in black ink, appearing to read 'Eric J. Branfman', written over a horizontal line.

Eric J. Branfman